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# Business Associations and Professions

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# Business Associations and Professions

## Business Associations and Professions; discipline of attorneys

Business and Professions Code §6049.1 (repealed and new); §§6002.1, 6051.1 (new); §§6007, 6028, 6049, 6050, 6051, 6052, 6068, 6086.5, 6086.6, 6100, 6102, 6180, 6180.2, 6180.3, 6180.5, 6180.11 (amended).

AB 1275 (Calderon); 1985 STAT. Ch 453

Support: State Bar of California

Under existing law every member of the State Bar of California is an active member unless the member is voluntarily or involuntarily enrolled as an inactive member.<sup>1</sup> Existing law authorizes the involuntary enrollment of an attorney as an inactive member if the attorney is unable to perform professional duties because of mental incapacity or the habitual use of intoxicants or drugs.<sup>2</sup> Under Chapter 453, the Board of Governors of the State Bar of California (hereinafter the Board) is authorized to order the involuntary inactive enrollment of an attorney if an imminent threat of harm is posed to clients of the attorney or the public by the conduct of the attorney.<sup>3</sup> Chapter 453 requires that in order to find that the conduct of the attorney poses an imminent threat of harm the Board must find that (1) the attorney has caused or is causing irreparable harm to clients or the public;<sup>4</sup> (2) a substantial likelihood exists that the harm will recur or continue;<sup>5</sup> (3) if disciplinary proceedings are pending, a substantial likelihood exists that a significant sanction will be imposed on the attorney at the conclusion of the proceedings;<sup>6</sup> (4) the balance of interests, as between the attorney, the attorney's clients, and the public favors an involuntary inactive enrollment;<sup>7</sup> and (5) the public interest would be served by an involuntary inactive enrollment.<sup>8</sup> Active status may be

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1. CAL. BUS. & PROF. CODE §6004.

2. *Id.* §6007(a).

3. *Id.* §6007(c)(1).

4. *Id.* §6007(c)(2)(A).

5. *Id.* §6007(c)(2)(B).

6. *Id.* §6007(c)(2)(C).

7. *Id.* §6007(c)(2)(D).

8. *Id.* §6007(c)(2)(E). *Id.* §6007(c)(3). Chapter 453 requires that the Board promulgate rules governing the process of finding that a threat of imminent harm exists. *Id.*

reinstated if the Board later finds that the conduct of the attorney no longer poses an imminent threat of harm.<sup>9</sup>

Existing law provides that under certain circumstances, a client, the State Bar, or an interested person or entity may request the superior court<sup>10</sup> to assume jurisdiction over the law practice of an attorney.<sup>11</sup> Chapter 453 expands existing law by allowing the superior court to assume jurisdiction on its own motion without waiting for the action of an extrajudicial person or entity.<sup>12</sup>

Under prior law, the duly authenticated records of a disciplinary proceeding in another state or jurisdiction were *prima facie* evidence of the contents of the records.<sup>13</sup> Chapter 453 provides that the determination<sup>14</sup> of another state or jurisdiction that an attorney has committed professional misconduct in that state is *conclusive* evidence, subject to specified requirements, that the attorney is culpable of professional misconduct in California.<sup>15</sup> Existing law provides for the immediate suspension and subsequent disbarment or suspension<sup>16</sup> of an attorney convicted<sup>17</sup> of a crime involving moral turpitude.<sup>18</sup> Chapter 453 further requires the immediate suspension of an attorney convicted of a felony.<sup>19</sup> After the judgment of conviction has become

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9. *Id.* §6007(c)(3) (upon attorney's proof to the Board).

10. *Id.* §6180.2 (court must be in the county where attorney's principal office is located or where the attorney resides).

11. *Id.* (attorney need not have been given notice of cessation of law practice). The court may assume jurisdiction over the practice if (1) the attorney has died, resigned, become an inactive member, been disbarred, or been suspended from the active practice of law and (2) the attorney has left an unfinished client matter for which no other member has assumed responsibility, or the interest of one or more clients will be prejudiced without the assumption of jurisdiction by the court. *See id.* §§6180, 6180.5.

12. *Id.* §6180.2.

13. 1945 Cal. Stat. c. 349, §1, at 804 (enacting CAL. BUS. & PROF. CODE §6049.1).

14. CAL. BUS. & PROF. CODE §6049.1 (determination may be made by a court of record or any other disciplinary body).

15. *Id.* Chapter 453 gives the Board the power to establish procedures for an expedited disciplinary proceeding for the disposition of the following specified issues: (1) the degree of discipline to be imposed; (2) whether, as a matter of law, the misconduct committed in the other jurisdiction would require discipline under the laws and rules binding members in California; and (3) whether the proceeding in the other jurisdiction lacked fundamental constitutional protection. The Board may also proceed under sections 6044, 6101, 6102 of the Business and Professions Code. *Id.*

16. *Id.* §6102(a). The court may in the interest of justice decline to impose or set aside an interim suspension. *Id.*

17. *Id.* (upon receipt of a certified copy of the conviction).

18. *Id.* In those cases in which moral turpitude is not inherent in the crime, the Supreme Court refers the case to the State Bar for determination. *In re Strick*, 34 Cal. 3d 891, 899, 196 Cal. Rptr. 509, 513, 671 P.2d 1251, 1255.

19. CAL. BUS. & PROF. CODE §6102(a) (a felony under the laws of California or of the United States). A crime is a felony if declared to be so specifically or by subdivision (a) of section 17 of the Penal Code, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of section 17 of the Penal Code. The crime is considered a felony even though considered a misdemeanor as a result of post-conviction proceedings or suspended probation or sentence. *Id.* §6102(b).

final,<sup>20</sup> Chapter 453 requires the Supreme Court to summarily disbar the attorney if the felony involved the specific intent to deceive, defraud, steal, or make or suborn a false statement and was committed in the course of the practice of law or in any manner in which the client of the attorney was a victim.<sup>21</sup>

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20. *Id.* §6102(a). A conviction is final once the time for appeal has elapsed, the judgment of conviction is affirmed on appeal, or the conviction has become final by other means. *Id.*

21. *Id.* §6102(c).

## **Business Associations and Professions; athlete agents**

Business and Professions Code §6106.7 (new); Labor Code §1545 (repealed); §§1531.5, 1535.5, 1535.7 (new); §§1500, 1510, 1511, 1512, 1513, 1514, 1515, 1515.5, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1530, 1530.5, 1531, 1532, 1533, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1546, 1547 (amended).

SB 11 (Montoya); 1985 STAT. Ch 1133

Support: National Football League Players Association; Industrial Relations;

Opposition: Sports Lawyers Association

Prior law generally provided a comprehensive scheme to register and regulate athlete agencies<sup>1</sup> by the Labor Commissioner.<sup>2</sup> Chapter 1133 instead provides for the registration of athlete agents,<sup>3</sup> rather than athlete agencies.<sup>4</sup> Existing law specifies that an attorney is not considered an athlete agent when acting as legal counsel.<sup>5</sup> Chapter 1133 provides, however, that an attorney who wilfully violates specified sections of the Labor Code<sup>6</sup> in negotiating a professional sports service contract<sup>7</sup> is subject to disciplinary action.<sup>8</sup>

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1. 1981 Cal. Stat. c. 929, §9, at 3487 (amending CAL. LAB. CODE §1500(b)) (definition of athlete agency).

2. 1981 Cal. Stat. c. 929, §1, at 3487 (amending CAL. LAB. CODE §§1500-1547).

3. CAL. LAB. CODE §1500(b) (definition of athlete agent).

4. *See id.* §§1500-1547 (athlete agents).

5. CAL. LAB. CODE §1500(b). "Critics have claimed that the phrase 'as legal counsel' is too broad and can cover almost any activity in which an attorney engages, including acting as a representative of a professional athlete." Comment, *Regulating the Professional Sports Agent: Is California in the Right Ballpark?* 15 PAC. L.J. 1231, 1241 (1984).

6. CAL. BUS. & PROF. CODE §6106.7 (specified sections are Labor Code §§1500(d), 1530.5(b), (c), 1535.5, 1535.7, and 1539).

7. CAL. LAB. CODE §1500(d) (definition of professional sports service contract).

8. CAL. BUS. & PROF. CODE §6106.7.

Prior law permitted the Labor Commissioner to investigate the character and responsibility of the registration applicant.<sup>9</sup> Chapter 1133 instead permits the Labor Commissioner to evaluate and investigate the applicant's education, training, experience, and character.<sup>10</sup> Prior law also required the sports agent application to be accompanied by affidavits of at least two reputable residents stating that the applicant is a person of good moral character or, if the applicant is a corporation, that the corporation has a reputation for fair dealing.<sup>11</sup> Chapter 1133 deletes this requirement and instead requires the application be accompanied by affidavits or certificates of completion of formal training or practical experience in specified areas.<sup>12</sup>

Prior law required the athlete agent to deposit with the Labor Commissioner a surety bond of \$10,000 prior to issuance or renewal of a registration.<sup>13</sup> Chapter 1133 increases the amount of the surety bond to \$25,000.<sup>14</sup> Further, existing law requires an athlete agent to file a schedule of fees to be charged and collected with the Labor Commissioner.<sup>15</sup> Chapter 1133 specifies that an athlete agent cannot collect a fee in excess of ten percent of the salary the athlete receives in that calendar year.<sup>16</sup> Finally, Chapter 1133 requires that a trust fund be established if the athlete agent is the recipient of the player's salary.<sup>17</sup>

Existing law prohibits a registrant from selling, transferring, or giving away any interest in or right to participate in the profits of the agency without the written consent of the Labor Commissioner.<sup>18</sup> Prior law provided a penalty of not less than \$100 or more than \$500, or imprisonment for not more than sixty days, or both, for such a viola-

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9. 1981 Cal. Stat. c. 929, §1, at 3487 (amending CAL. LAB. CODE §1512).

10. CAL. LAB. CODE §1512. *See generally* Comment, *supra* note 5, at 1236-37 (example of need for proper investigation).

11. 1981 Cal. Stat. c. 929, §1, at 3487 (amending CAL. LAB. CODE §1511).

12. CAL. LAB. CODE §1511. Specified areas are contract negotiation, complaint resolution, arbitration or civil resolution of contract disputes. The Labor Commissioner may consider any other relevant training, education, or experience in evaluating the applicant's qualifications. *Id.*

13. 1981 Cal. Stat. c. 929, §1, at 3487 (amending CAL. LAB. CODE §1519).

14. CAL. LAB. CODE §1519. A certificate of deposit or savings account assigned to the Labor Commissioner is the equivalent to a surety bond. *Id.* *See* Comment, *supra* note 5, at 1243 (reasons why prior bonding requirements were inadequate).

15. CAL. LAB. CODE §1531.

16. *Id.* §1531. *See* Comment, *supra* note 5, at 1239 ("... some agents have been successful in charging up to 25 percent of the value of the contract negotiated by the agent").

17. CAL. LAB. CODE §1531.5. An athlete agent who receives any payment on behalf of the athlete will immediately deposit the payment in a trust fund account maintained by the athlete agent or other recognized depository. *Id.*

18. CAL. LAB. CODE §1535.

tion.<sup>19</sup> Chapter 1133 increases the penalties for such a violation to a fine of not less than \$500 or more than \$5,000, or imprisonment of not more than ninety days, or both.<sup>20</sup>

Chapter 1133 prohibits an athlete agent from having any interest in any entity that is directly involved in the same sport as the athlete with whom the athlete agent has a contract.<sup>21</sup> Chapter 1133 also prohibits an athlete agent from entering into any agreement whereby the agent offers anything of value<sup>22</sup> to any employee of an educational institution in return for the referral of any clients by the employee and prohibits any fulltime employee of a union or players association connected with professional sports to own or participate in any revenues of an athlete agent.<sup>23</sup> Moreover, when the athlete agent gives advice regarding an entity in which the agent has an ownership interest, Chapter 1133 requires the agent to disclose that interest to the athlete.<sup>24</sup>

Prior law required a person appealing a decision of the Labor Commissioner regarding a controversy arising under Section 1543 of the Labor Code to file the appeal with the superior court, and to execute a bond in a specified amount.<sup>25</sup> Chapter 1133, however, requires the appeal to be filed with a court of competent jurisdiction, and deletes the requirement for a bond.<sup>26</sup>

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19. 1981 Cal. Stat. c. 929, § 1, at 3487 (amending CAL. LAB. CODE §1535).

20. CAL. LAB. CODE §§1535. For other violations of Chapter 1 of the Labor Code, existing law provides the punishment is to be a fine of not less than \$1,000 or imprisonment, or both. Chapter 1133 increases the maximum imprisonment for this violation from 60 days to 90 days. *Id.* §1547.

21. *Id.* §1535.5(a). *See id.* §1535(b) (applicability of provision to attorneys).

22. An offer of anything of value includes the rendition of free or reduced price legal services. *Id.* §1539.

23. *Id.* §1539.

24. *Id.* §1535.7.

25. 1981 Cal. Stat. c. 929, §1, at 3487 (amending CAL. LAB. CODE §1543).

26. CAL. LAB. CODE §1543.

## **Business Associations and Professions; registration of lobbyists**

Govt. Code §§82040, 86100, 86101, 86102, 86103, 86104, 86105, 86106, 86107, 86108, 86109, 86110, 86111 (repealed); §§82038.5, 82039.5, 86100, 86101, 86102, 86103, 86104, 86105, 86106, 86107, 86108, 86109, 86110, 86111, 86112, 86113, 86114, 86115, 86116, 86117 (new); §§86201, 86203, 86205, 90001, (amended).

SB 659 (Bergeson); 1985 STAT. Ch 1183

Support: Fair Political Practices Commission

Under existing law, individual lobbyists<sup>1</sup> are required to register with the Secretary of State.<sup>2</sup> Under prior law, however, lobbying firms<sup>3</sup> or lobbyist employers<sup>4</sup> were not required to register with the Secretary of State.<sup>5</sup> With the enactment of Chapter 1183, lobbying firms and lobbyist employers must register with the Secretary of State.<sup>6</sup>

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1. CAL. GOV'T CODE §82039 (definition of lobbyist). *See also* CAL. ADMIN. CODE tit. 2, §18619(2)(b) (1982) (definition of lobbyist).

2. CAL. GOV'T CODE §86100.

3. *Id.* §82038.5 (definition of lobbying firm).

4. *Id.* §82039.5 (definition of lobbyist employer).

5. *See* 1983 Cal. Stat. c. 209, §1, at 1364 (amending CAL. GOV'T CODE §86100). Prior law did require, however, all persons hiring a lobbyist for the purpose of influencing legislative or administrative action, or making payments over \$2,500 to influence legislative or administrative action, to file periodic reports. 1984 Cal. Stat. c. 161, §4, at 184 (amending CAL. GOV'T CODE §86109).

6. CAL. GOV'T CODE §86100(b),(c). *See also id.* §§86101, 86102, 86104-86107 (requirements for registration of lobbying firms and lobbyist employers). Lobbyist employers who contract for the services of a lobbying firm are not required to register with the Secretary of State but are required to file statements pursuant to CAL. GOV'T CODE §86116. *Id.* §86100(d).

## **Business Associations and Professions; conversion to a cooperative corporation**

Corporations Code §§911, 5320, 5813.5, 7313, 7813.5, 9621, 12452, 12504 (amended).

AB 502 (Stirling); 1985 STAT. Ch 378

Support: State Bar Committee on Revision of the Nonprofit Corporation Law; Department of Consumer Affairs

Under existing law, a corporation<sup>1</sup> may convert to a nonprofit public

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1. CAL. CORP. CODE §162 (definition of corporation).

benefit corporation,<sup>2</sup> mutual benefit corporation,<sup>3</sup> or religious corporation<sup>4</sup> by amending the articles of incorporation.<sup>5</sup> Chapter 378 expands existing law by allowing a corporation to convert to a cooperative corporation<sup>6</sup> by an amendment to the articles of incorporation.<sup>7</sup> Existing law permits a religious corporation to convert to a public benefit corporation by amending the articles of incorporation.<sup>8</sup> Under Chapter 378, a religious corporation also may convert to a mutual benefit corporation or cooperative corporation.<sup>9</sup>

Existing law requires that conversion of a corporation to a public benefit or religious corporation be approved by a majority of the members and the Commissioner of Corporations, or by 100 percent of the membership voting power.<sup>10</sup> Alternatively, Chapter 378 provides that conversion to a public benefit or religious corporation may be approved by the members in an election conducted by written ballot pursuant to specified requirements<sup>11</sup> in which no negative votes may be cast.<sup>12</sup> In addition, Chapter 378 removes the prior law requirement that conversion of a mutual benefit corporation to a public benefit or religious corporation be approved by the Commissioner of Corporations or 100 percent of the membership voting power.<sup>13</sup> Finally, Chapter 378 clarifies existing law by specifically providing that a membership or an interest in a public benefit corporation may not be transferred unless authorized by the bylaws or articles of incorporation, and may not be transferred for value.<sup>14</sup>

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2. A public benefit corporation is a corporation formed for any public or charitable purpose. *Id.* §5111.

3. A mutual benefit corporation is a corporation formed for any public, charitable, or religious purpose, and whose assets must be distributed upon dissolution to persons carrying on public, charitable, or religious activities. *Id.* §7111.

4. A religious corporation is a corporation formed primarily or exclusively for any religious purpose. *Id.* §5061.

5. *Id.* §911.

6. A cooperative corporation is a corporation whose earnings, savings, or benefits are used for the general welfare of the members, or proportionately distributed to some or all of the members or patrons, based on patronage of the corporation. CAL. CORP. CODE §12201.

7. *Id.* §911. Chapter 378 also provides that public benefit and mutual benefit corporations may now convert to a cooperative corporation. *Id.* §§5813.5(a), 7813.5.

8. *Id.* §9621.

9. *Id.*

10. *Id.* §12504(b).

11. The election by written ballot must be held pursuant to section 12463 of the Corporations Code. *Id.* §12504(b).

12. *Id.*

13. Compare 1982 Cal. Stat. c. 1625, §3, at 6491 (enacting CAL. CORP. CODE §12504) with *id.*

14. CAL. CORP. CODE §5320.



## **Business Associations and Professions; filling director vacancies**

Corporations Code §§305, 5224, 7224, 9224, 12364 (amended).

AB 504 (Stirling); 1985 STAT. Ch 329

Support: Business Law Section of the State Bar

Under existing law, vacancies<sup>1</sup> on the board of directors of a corporation<sup>2</sup> may be filled by a majority of the directors then in office or by a sole remaining director.<sup>3</sup> Under prior law, a meeting to fill a vacant director position could be convened with or without notice to board members.<sup>4</sup> Chapter 329 specifically provides that if the number of directors remaining in office is less than a quorum, vacancies may be filled by (1) the unanimous written consent of the directors then in office; (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice, or waivers of notice, complying with specified requirements,<sup>5</sup> or (3) a sole remaining director.<sup>6</sup>

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1. The procedures provided by Chapter 329 do not apply to vacancies created by the removal of a director. CAL. CORP. CODE §§305, 5224, 7224, 9224, 12364.

2. The forms of corporations that are affected by Chapter 329 are business, public benefit, mutual benefit, religious, and cooperative corporations. *Id.* §§305, 5224, 7224, 9224, 12364.

3. *Id.* §§305 (business corporations), 5224 (public benefit corporations), 7224 (mutual benefit corporations), 9224 (religious corporations), 12364 (cooperative corporations).

4. See 1975 al. Stat. c. 682, §7, at 1516 (enacting CAL. CORP. CODE §305) (business corporations); 1978 Cal. Stat. c. 567, §5, at 1750 (enacting CAL. CORP. CODE §5224) (public benefit corporations); *id.* §6, at 1821 (enacting CAL. CORP. CODE §7224) (mutual benefit corporations); *id.* §7, at 1894 (enacting CAL. CORP. CODE §9224) (religious corporations); 1982 Cal. Stat. c. 1625, §3, at 6491 (enacting CAL. CORP. CODE §12364) (cooperative corporations).

5. CAL. CORP. CODE §§305 (business corporations), 5224 (public benefit corporations), 7224 (mutual benefit corporations), 9224 (religious corporations), 12364 (cooperative corporations). Chapter 329 requires board members to be served notice by mail of a meeting to be held within four days, or by personal delivery, telephone, or telegraph for a meeting to be held within forty-eight hours, pursuant to sections 307 (business corporations), 5211 (public benefit corporations), 7221 (mutual benefit corporations), 9211 (religious corporations), and 12351 (cooperative corporations) of the Corporation Code. *Id.*

6. *Id.* §305(a)(3).

## **Business Associations and Professions; fictitious business names**

Business and Professions Code §17913 (amended); Code of Civil Procedure §117.41 (amended).

SB 359 (Greene); 1985 STAT. Ch 1515

Support: Department of Finance; State Consumer Services Agency

Under existing law, every person<sup>1</sup> regularly conducting business for profit under a fictitious business name<sup>2</sup> is required to file a fictitious business name statement.<sup>3</sup> Chapter 1515 supplements existing law by requiring the registrant<sup>4</sup> to declare on the statement the date on which business first was transacted under the fictitious business name.<sup>5</sup> A person transacting business under a fictitious business name is prohibited under existing law from maintaining any action upon any contract or transaction in the fictitious business name until a fictitious business name statement has been filed, executed, and published.<sup>6</sup> Chapter 1515 provides that if the claim of a plaintiff is based upon a contract or transaction under a fictitious business name the action must be dismissed without prejudice if the plaintiff has not filed a fictitious business name statement.<sup>7</sup> Finally, under existing law, an entity that is not a natural person or corporation may appear in small claims court only through a regularly employed person of that entity.<sup>8</sup> Chapter 1515 requires any representative of a plaintiff that is not a natural person, to affirm that he or she is authorized to represent that party and identify the basis of the representation.<sup>9</sup>

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1. Person is defined as individuals, partnerships, corporations, and other associations. CAL BUS. AND PROF. CODE §17902.

2. Fictitious business name is defined as a name that suggests the existence of additional owners, or in the case of a corporation, any name other than the name stated in the articles of incorporation. *Id.* §17900.

3. *Id.* §17910.

4. Registrant is defined as a person that is filing or has filed a fictitious business name statement. *Id.* §17903.

5. *Id.* §17913(b)(5). If the registrant has not yet begun business under the fictitious business name, the registrant must indicate that the provision is not applicable. *Id.*

6. *Id.* §17918. The registrant must publish a fictitious business name statement in a newspaper of general circulation in the county in which the principal place of business of the registrant is located, within thirty days after filing a fictitious business name statement. *Id.* §17917(a).

7. CAL. CIV. PROC. CODE §117.41(b).

8. *Id.* §117.41(a).

9. *Id.* §117.41(c).

**Business Associations and Professions; corporate securities,  
foreign corporations**

Corporations Code §2107 (repealed and new); §§2117, 2206, 2302.5 (new); §§907, 1503, 1504, 2105, 2108 (amended); Government Code §§12210, 12210.5 (amended).

AB 1141 (Stirling); 1985 STAT. Ch 764

Support: Secretary of State; Department of Corporations;  
Department of Finance

Under existing law, the articles<sup>1</sup> of a corporation<sup>2</sup> may be amended in any respect, if after amendment the articles contain only provisions that would have been lawful to include in the articles of the corporation originally filed.<sup>3</sup> Additionally, if the purpose of amending the articles is to effect a stock split or a reverse stock split, or to reclassify, cancel, exchange, or change in some form the outstanding shares, the resulting effect on the outstanding shares must be stated in the amended articles.<sup>4</sup> Chapter 764 provides that if the amendment is adding, eliminating, or changing a stated par value, a statement describing the effect on outstanding shares is not required.<sup>5</sup> In addition, if the purpose of amending the articles of incorporation is to change the statement of authorized shares from a single class of shares to two classes of shares,<sup>6</sup> Chapter 764 provides that the shares outstanding prior to the amendment automatically are considered to be common stock after the amendment.<sup>7</sup> Chapter 764 also provides guidance for determining which of the two resulting classes will be considered to be the common stock class.<sup>8</sup> Furthermore, Chapter 764 provides that if the articles of incorporation do not include a reference to par value, the shares of stock are considered to be without par value.<sup>9</sup>

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1. CAL. CORP. CODE §154 (definition of articles).

2. *Id.* §162 (definition of corporation).

3. *Id.* §900. A corporation may not amend the articles, however, to alter any statement that may appear in the original articles concerning the names and addresses of the first directors or the name and address of the original agent, except to correct errors in the statement. *Id.* §900(b). *See id.* §169 (definition of filed).

4. *Id.* §907(b).

5. *See id.* §907(d).

6. *See id.* §400 (authorizing a corporation to issue more than one class or series of shares).

7. CAL. CORP. CODE §907(c). The number of shares outstanding will equal the same number of shares of common stock. The provisions of this section will have no effect, however, if the amendment of the articles of incorporation includes a statement of the effect of the amendment on outstanding shares. *Id.* *See id.* §159 (definition of common shares).

8. CAL. CORP. CODE §907(c). If only one of the two classes of stock is designated as common, that class is the common stock class. If, however, both classes or neither class is designated as common, but one of the two classes has limited or no voting rights, the class that does not have limited voting rights is to be considered the common stock class. *Id.*

9. *Id.* §2302.5.

Under existing law, a foreign corporation<sup>10</sup> must file annually an officer's certificate<sup>11</sup> that sets forth specific information regarding the corporation.<sup>12</sup> Under Chapter 764, however, a foreign corporation is exempt from filing an officer's certificate under certain circumstances.<sup>13</sup> In addition to the requirements under existing law,<sup>14</sup> Chapter 764 requires a foreign corporation qualified to transact intrastate business to annually file a statement containing specified information concerning the corporation.<sup>15</sup> Finally, Chapter 764 provides that penalties for failure to file an annual statement of information<sup>16</sup> and the power of the commissioner to suspend the powers, rights, and privileges<sup>17</sup> of the corporation apply to both domestic and foreign corporations.<sup>18</sup>

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10. *Id.* §171 (definition of foreign corporation).

11. *Id.* §2108(g) (definition of officer's certificate).

12. *Id.* §2108(a) (required contents of officer's certificate).

13. *Id.* §2108(f) (exemptions from filing an officer's certificate).

14. Existing law requires a foreign corporation to obtain a certificate of qualification from the Secretary of State before transacting intrastate business. The certificate may be obtained by filing a statement that sets forth specified information regarding the foreign corporation. *Id.* §2105. Additionally, existing law requires that a foreign corporation qualified to transact intrastate business file an amended statement if the name of the corporation changes. *Id.* §2107. Existing law also requires amended statements to be filed by a foreign association upon a change in certain previously filed information. *Id.* §2107(b).

15. *Id.* §2117 (required contents or statement).

16. *Id.* §2204 (failure of a domestic corporation to file annual statement of general information).

17. *Id.* §2205 (suspension of domestic corporate powers, rights, and privileges).

18. *Id.* §2206. The suspension of the corporate powers, rights, and privileges of a domestic corporation means the forfeiture of the exercise of corporate powers, rights, and privileges of a foreign corporation. *Id.* §2206(a). A foreign corporation may continue to transact business within the state after the forfeiture of the corporate powers, rights, and privileges if the business transacted subsequent to the forfeiture does not require a certificate of qualification. *Id.* §2206(c).

## **Business Associations and Professions; telephonic sellers**

Business and Professions Code §§17511, 17511.1, 17511.2, 17511.3, 17511.4, 17511.5, 17511.6, 17511.7, 17511.8, 17511.9, 17511.10 (new).

AB 776 (Frazee); 1985 STAT. Ch 1009

Support: Attorney General; Department of Corporations; Department of Finance; Department of Consumer Affairs

Chapter 1009 enacts provisions regulating certain persons that solicit sales over the telephone.<sup>1</sup> Under Chapter 1009, a telephonic seller<sup>2</sup>

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1. CAL. BUS. & PROF. CODE §§17511-17511.10.

2. *Id.* §17511.1 (definition of telephonic seller). In order to qualify as a telephonic seller,

must register with the Department of Justice at least ten days prior to doing business in the state.<sup>3</sup> Registration will be valid for a period of one year<sup>4</sup> and must be updated within ten days of a material change in the originally filed information.<sup>5</sup> Chapter 1009 provides that specific information must be included in the registration materials filed with the Department of Justice.<sup>6</sup> Additionally, Chapter 1009 requires that

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the seller must cause a telephonic solicitation or attempted telephonic solicitation to occur. The solicitation is considered complete if the telephonic seller initiates contact with a prospective purchaser and represents or implies one or more of the following: (1) That purchasing one or more items will result in the receipt of additional or other items; (2) that a prospective purchaser will receive a prize or gift as an inducement to purchase or rent goods or services, or pay any money; (3) that the purchase of office equipment will be at prices below those that are usually charged; (4) that the seller is other than the actual seller; (5) that items for sale are manufactured or supplied by other than the actual manufacturer or supplier; (6) that items for sale are gold, silver, or other metals; diamonds, rubies, sapphires, or other stones; coal or other minerals; or any interest in oil, gas, mineral fields, wells, or exploration sites. *Id.* §17511.1(a). Additionally, a telephonic solicitation may be accomplished by a purchaser responding by telephone to advertisements placed on behalf of the telephonic seller that imply or represent that the seller is offering to sell gold, silver, or other metals; diamonds, rubies, sapphires, or other stones; coal or other minerals; or any interest in oil, gas, mineral fields, wells, or exploration sites. *Id.* §17511.1(b). Chapter 1009 provides that the following are not considered telephonic sellers: (1) A person selling a security qualified for sale or a security exempt from qualification; (2) a person holding a real estate license; (3) a person holding a contractor's license; (4) a licensed insurance agent; (5) a person soliciting the sale of a franchise; (6) a person soliciting the sale of a seller assisted marketing plan; (7) a person primarily soliciting the sale of a newspaper of general circulation, a magazine, or membership in a book or record club; (8) a person soliciting new business from previous purchasers; (9) a person that does not intend to complete the sales presentation by telephone and does not; (10) any supervised financial institution; (11) a person soliciting the sale of a preneed funeral arrangement; (12) a cemetery broker; (13) a person soliciting services of a cable television system; (14) a person or affiliate of a person whose business is regulated by the Public Utilities Commission; (15) a person soliciting the sale of a commodity; (16) an issuer or subsidiary of an issuer that has a class of securities subject to Section 12 of the Securities Exchange Act of 1934; (17) a person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer. *Id.* §17511.1(c).

3. *Id.* §17511.3. A telephonic seller is considered to be doing business in the state by soliciting prospective purchasers from within the state or soliciting prospective purchasers that are located in the state. *Id.*

4. *Id.* §17511.3(b).

5. *Id.* §17511.3(c).

6. *Id.* §17511.4. Each filing must contain the following information: (1) The name of the seller; (2) the seller's form of business, location of organization, whether the seller is a corporation or a partnership, and a copy of the articles of incorporation, bylaws, and amendments of a corporation, or a copy of the partnership agreement; (3) the address of the principal business location from which the telephonic seller will be conducting business; (4) a list of all telephone numbers to be used by the seller; (5) the names and offices held by the seller's officers, directors, trustees, general, or limited partners; (6) the residence address and driver's license number of each officer, director, trustee, general partner and limited partner; (7) the name and address of each person the telephonic seller places in charge at each location from which the seller will be doing business within the state; (8) a statement with respect to any officer, director, trustee, general partner, limited partner, or person in charge who (a) has been convicted of fraud, theft, embezzlement, conversion, misappropriation of property, or a violation of Chapter 1009, (b) has had a final judgment entered in a civil or administrative action based on fraud, theft, embezzlement, conversion, misappropriation of property, the use of misleading representations, deceptive business practices, or a violation of Chapter 1009, (c) is subject to an injunction relating to business activity as a result of an action brought by a public

certain information be provided to each prospective purchaser.<sup>7</sup>

Under Chapter 1009, a telephonic seller must consent to the appointment of the Attorney General to act as attorney to receive service of process in any noncriminal action filed against the seller.<sup>8</sup> Additionally, telephonic sellers may not make any references concerning their compliance with the provisions of Chapter 1009 to any prospective or actual purchaser.<sup>9</sup> Chapter 1009 also enumerates the penalties to be invoked upon violation of any provision within the Chapter.<sup>10</sup> Finally, Chapter 1009 provides that if one of the provisions of the Chapter is held unconstitutional, the remaining provisions are severable and will not be affected.<sup>11</sup>

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agency, or (d) has filed bankruptcy within the past seven years; (9) a listing of names and addresses of all persons soliciting on behalf of the seller; (10) a copy of all sales scripts used by sales persons; (11) a copy of all sales information and literature; (12) if the seller represents that purchasers will receive prizes or bonuses, specified information about such prizes or bonuses; (13) if the telephonic seller offers to sell any metal, stone, or mineral, specified information about such metals, stones, or minerals; (14) if the telephonic seller offers to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, specified information about such oil, gas, mineral fields, wells, or exploration sites; and (15) the name and address, other than the Attorney General, of the telephonic seller's agent for service of process. *Id.*

7. *Id.* §17511.5 (specified information that must be provided to all prospective purchasers).

8. *Id.* §17511.6.

9. *Id.* §17511.7.

10. *Id.* §§17511.8, 17511.9. Any salesperson who solicits prospective purchasers on behalf of a telephonic seller, who is not currently registered, is guilty of a misdemeanor punishable by imprisonment in the county jail for no more than six months, by a fine not to exceed \$2,500, or by both the fine and imprisonment. *Id.* §17511.8. Any person, including the seller, salesperson, agent or representative of the seller, or an independent contractor who willfully violates any provision of Chapter 1009, or who directly employs any scheme to deceive in connection with the offer or sale by any telephonic seller, or deceives any person in connection with the offer or sale, upon conviction, will be punished by a fine no greater than \$10,000 for each transaction, imprisonment for not more than one year, or both fine and imprisonment. *Id.* §17511.9.

11. 1985 Cal. Stat. c. 1009, §2, at \_\_\_\_.

## **Business Associations and Professions; savings and loan associations**

Civil Procedure Code §1985.3 (amended); Corporations Code §25100 (amended); Financial Code §§6512 (repealed); 5100.5, 5114.5, 6663, 7700.3 (new); 5116, 5120, 5204, 5205.5, 5606, 5654, 5758, 5806, 6002, 6050, 6456, 6503, 6504, 6520, 6521, 6554, 6555, 6556, 6650, 6660, 7000, 7053, 7252, 7450, 7454, 7500, 7650 (amended); Government Code §§ 53601, 53601.5, 53608, 53630, 53635, 53635.5, 53637, 53638, 53648, 53679 (amended); Probate Code §771 (amended). AB 215 (Bane); 1985 STAT. Ch 983

Support: California League of Savings Institutions; Department of Savings and Loan; Department of Finance

Existing law prescribes the procedure for attaching the assets of a debtor.<sup>1</sup> Chapter 983 specifies that any attachment that is levied upon a savings account or other property maintained by a savings and loan association must be served upon the manager or other officer of the association at the branch office where the account is maintained.<sup>2</sup> If the writ or notice of attachment<sup>3</sup> is not served upon the manager or other officer of the association at the branch office where the property or account is maintained, Chapter 983 provides that the writ or notice of attachment is ineffective against the savings and loan association.<sup>4</sup>

Existing law specifies the loan activities in which a savings and loan association may engage.<sup>5</sup> Chapter 983 authorizes a savings and loan association to make construction loans in addition to other lending activities of the association.<sup>6</sup> Existing law permits a savings and loan association to act as an escrow agent<sup>7</sup> in connection with the sale, transfer, encumbering, or leasing of real property.<sup>8</sup> Under Chapter 983, a savings and loan association is permitted to act as an escrow agent in connection with the sale, transfer, encumbering, or leasing of personal property in addition to real property.<sup>9</sup> Under existing law,

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1. CAL. CIV. PROC. CODE §§484.010-484.110.

2. CAL. FIN. CODE §6663.

3. See CAL. CIV. PROC. CODE §484.040 (documents required for attachment).

4. CAL. FIN. CODE §6663 (ineffective irrespective of any other provision of law relating to service of attachments).

5. See generally CAL. FIN. CODE §7150.

6. CAL. FIN. CODE §7500(a).

7. An escrow agent is any person engaged in the business of receiving escrows for deposit or delivery for compensation. *Id.* §17004.

8. *Id.* §6521.

9. *Id.*

a savings and loan association must limit the number of loans the association makes that are not secured by real property.<sup>10</sup> Furthermore, existing law limits the number of loans a savings and loan association may make that are secured by nonresidential real property.<sup>11</sup> Chapter 983 modifies the definition of residential real property to include any improved real estate that is used primarily as a residence and does not contain more than four dwelling units.<sup>12</sup>

Existing law identifies certain activities in which a savings and loan association may not engage without prior approval of the Commissioner.<sup>13</sup> Chapter 983 includes the acquisition of the assets or savings account liabilities of any other financial institution among those activities by a savings and loan association that require prior approval of the Commissioner.<sup>14</sup> Existing law permits a savings and loan association to make loans to a director, officer, subsidiary or parent corporation.<sup>15</sup> Chapter 983 also permits a savings and loan association to make loans to an affiliated person.<sup>16</sup>

Under existing law deposits maintained by a public agency<sup>17</sup> must not exceed 400 percent of the statutory net worth<sup>18</sup> of the savings and loan association.<sup>19</sup> Chapter 983 provides that no limitation applies to the investment of funds by a public agency in accounts that consist solely of negotiable certificates of deposit.<sup>20</sup>

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10. *Id.* §7452 (limits on consumer loans); §7453 (limits on agricultural, business, corporate or commercial loans).

11. *Id.* §7505 (must not exceed 40% of the assets of the savings and loan association).

12. *Id.* §5114.5.

13. *Id.* §5654. Commissioner refers to the Savings and Loan Commissioner. *Id.* §5060.

14. *Id.* §5654(a)(6).

15. *Id.* §7450(b).

16. *Id.* Any loan is subject to regulations by the Commissioner of Savings and Loan Associations. *Id.* See 12 C.F.R. §561.29 (983) (definition of affiliated person).

17. CAL. FIN. CODE §7000(b) (includes the State of California, cities, counties, political subdivisions, public corporations or districts of the state).

18. Statutory net worth is the sum of issued and outstanding capital stock, issued and outstanding capital certificates, paid-in surplus, retained earnings, pledged savings accounts of a mutual association with the approval of the Commissioner, and general reserves and other amounts as the Commissioner prescribes. *Id.* §5120.

19. *Id.* §7000(b).

20. *Id.*



## **Business Associations and Professions; financial institution fraud**

Financial Code §§779, 7459, 7460 (new).

AB 1054 (Bane); 1985 STAT. Ch 656

Support: California League of Savings Institutions; State Banking Department; California Bankers Association

Existing law provides that breach of an obligation secured by a mortgage<sup>1</sup> may afford the mortgagee or any successor in interest a power of sale.<sup>2</sup> If a deficiency exists after the sale, the maximum amount of any additional judgment is limited to the difference between the amount for which the property was sold and the entire amount of the obligation secured by the mortgage.<sup>3</sup> Chapter 656 provides an exception to the judgment limitation, however, if the action is based on fraud.<sup>4</sup> Under Chapter 656, a bank<sup>5</sup> or savings and loan association<sup>6</sup> may recover from a fraudulent borrower, with certain limitations, actual damages plus exemplary damages not in excess of fifty percent of the actual damages.<sup>7</sup> Chapter 656 further provides that an action for damages based upon fraud does not constitute a deficiency judgment.<sup>8</sup>

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1. CAL. CIV. CODE §2920 (definition of mortgage).

2. *Id.* §2924. *See id.* §2932 (definition of power of sale).

3. CAL. CIV. PROC. CODE §580(a).

4. CAL. FIN. CODE §779. Cal. Civ. Code §1572 (definition of fraud).

5. CAL. FIN. CODE §779(a) (including a state or nationally chartered bank, and the subsidiaries or affiliates of the bank transacting business in this state if they originated the loan, or any successor in interest).

6. *Id.* §7460(a) (including an association or federal association that originates the loan, or any successor in interest).

7. CAL. FIN. CODE §§779(b) (banks), 7460(b) (associations). The provisions of Chapter 656 do not apply to loans secured by single-family, owner-occupied residential real property if the property is occupied by the borrower as represented to the lender to secure the loan, and the loan is for \$150,000 or less as annually adjusted by the Consumer Price Index. *Id.* Under Chapter 656, an action based on fraud may be brought notwithstanding Section 726 of the Code of Civil Procedure, which stipulates that only one form of action may be brought to foreclose a mortgage. *Id.* §§779(a), 7460(a).

8. *Id.* §§779(c), 7460(c). A deficiency judgment amounts to the value of the obligation plus interest. *Kish v. Bay Counties Title Guaranty Co.*, 254 Cal. App. 2d 725, 733, 62 Cal. Rptr. 494, 500 (1967). An action brought under Chapter 656 will not constitute a deficiency judgment within the meaning of Sections 580(a), 580(b), or 580(d) of the Code of Civil Procedure. CAL. FIN. CODE §§779(c), 7460(c). Prior to the enactment of Chapter 656, a California appellate court held that section 580(d) of the Civil Procedure Code barred any deficiency judgment for amounts due under a promissory note if the trust beneficiary elected to foreclose by exercising the power of sale. *First Fed. Sav. & Loan Association v. Lehman*, 159 Cal. App. 3d 537, 541, 205 Cal. Rptr. 600, 602 (1984). Chapter 656 appears to abrogate the decision in *Lehman*. Compare CAL. FIN. CODE §§779, 7460 (allowing additional recovery based on fraud) with *First Fed. Sav. & Loan Association v. Lehman*, 159 Cal. App. 3d 537, 205 Cal. Rptr. 600 (1984) (barring recovery in a deficiency judgment once property is foreclosed).

## Business Associations and Professions; banks—insider transactions.

Financial Code §3351 (repealed); §§3372.5, 3377 (new); §§3370, 3371, 3372, 3373, 3374, 3375, 3376 (amended), Government Code §§11346.1, 11346.2 (amended).

AB 1595 (McAlister); 1985 STAT. Ch 956

Support: State Banking Department; California Bankers Association; Department of Finance

Existing law protects against the misuse of bank<sup>1</sup> funds by restricting extensions of bank credit<sup>2</sup> to executive officers,<sup>3</sup> directors, and principal shareholders<sup>4</sup> of the bank.<sup>5</sup> Executive officers are defined by existing law as persons that actually participate in the major policymaking functions of the bank.<sup>6</sup> Chapter 956 expands the definition of executive officers to include the managers of branch offices of foreign<sup>7</sup> banks.<sup>8</sup>

Under existing law, restrictions are placed upon the extension of credit to related interests<sup>9</sup> of executive officers, directors, and principal shareholders.<sup>10</sup> Chapter 956 provides that the definition of related interest includes any company<sup>11</sup> a majority of which is owned by one

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1. CAL. FIN. CODE §3371(a) (definition of bank). Any reference to member bank in Regulation O of the Federal Reserve Board is construed to mean bank as used in section 3371(a) of the Financial Code. *Id.* §3372(b).

2. CAL. FIN. CODE §3371(d) (definition of extension of credit); 12 C.F.R. §215.3 (1985). With few exceptions, the Financial Code incorporates the provisions and definitions of Regulation O of the Federal Reserve Board as found in part 215 of title 12 of the Code of Federal Regulations. *See* CAL. FIN. CODE §§3370-3376.

3. CAL. FIN. CODE §§3371(c), 3372(d) (definition of executive officer); 12 C.F.R. §215.2(d) (1985) (definition of executive officer).

4. CAL. FIN. CODE §3372; 12 C.F.R. §215.2(j) (1985) (directly or indirectly owns, controls, or has power to vote more than 10 percent of any class of stock). Principal shareholders in the holding company of the bank and in any other subsidiary of the bank holding company are included in the definition. CAL. FIN. CODE §3372; 12 C.F.R. §215.2(j) (1985).

5. CAL. FIN. CODE §§3370-3377. The misuse of bank funds by officers, directors and principal shareholders has been a critical factor in the failure of banks in the past. Treftz, *Statutory Regulation of Loans to Directors of Commercial Banks*, 15 S. CAL. L. REV. 293, 294 (1942).

6. CAL. FIN. CODE §3372; 12 C.F.R. §215.2(d) (1985) (whether or not officer is compensated and without regard to the title given the officer). Unless the officer is excluded by resolution or bylaws or unless the officer does not actually participate, the definition includes the chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer. CAL. FIN. CODE §3372; 12 C.F.R. §215.2(d) (1985).

7. CAL. FIN. CODE §1700(i) (means a bank formed under the laws of either a foreign nation or another state).

8. *Id.* §§3371(c), 3372(d).

9. *Id.* §3372(g) (definition of a related interest); 12 C.F.R. §215.2(k) (1985) (definition of a related interest).

10. CAL. FIN. CODE §3372; 12 C.F.R. §§215.4, 215.5 (1985).

11. CAL. FIN. CODE §3371(b) (definition of company); 12 C.F.R. §215.2(a) (1985) (definition of a company).

or more executive officers or directors.<sup>12</sup> Furthermore, Chapter 956 limits the aggregate amount of credit that may be extended to a company that qualifies as a related interest under Chapter 956.<sup>13</sup> Finally, the related interests of executive officers, directors, and principal shareholders must be reported to the bank on at least an annual basis.<sup>14</sup>

Existing law limits the aggregate amount of credit a bank may extend to an executive officer of the bank.<sup>15</sup> Chapter 956 requires the executive officer to notify his or her bank if the officer becomes indebted to another bank in an aggregate amount in excess of that permitted to be loaned to the officer by the officer's bank.<sup>16</sup> In addition, Chapter 956 requires a bank to maintain records identifying executive officers, directors, principal shareholders and their related interests.<sup>17</sup> Records that specify the amount and terms of credit extended to these individuals and their related interests also must be maintained.<sup>18</sup>

Under prior law, an officer, director, or principal shareholder that knowingly violated restrictions upon the extension of credit was guilty of a felony.<sup>19</sup> Chapter 956 provides that *any* person that knowingly violates credit restrictions is guilty of a felony.<sup>20</sup> Finally, any present extension of credit that is in violation of credit restrictions must be reduced in an amount necessary to comply with the restrictions by October 1, 1986.<sup>21</sup>

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12. CAL. FIN. CODE §3372(g)(1) (majority owned individually or collectively). *Id.* §3372(g)(2). This restriction does not apply to the extension of credit to the holding company of the bank, to any subsidiary of the holding company of the bank, or to any nonprofit company. The nonprofit company must be engaged in religious, charitable, educational, scientific, literary, social, or recreational activities and the bank officer or director must not receive more than \$1,000 per year from the company. *Id.*

13. *Id.* §3372.5; 12 C.F.R. §215.5(c)(3) (1985). The aggregate amount of credit cannot, under any circumstances, exceed \$100,000 and is limited to the higher of two and one-half percent of the capital and unimpaired surplus of the bank or \$25,000. CAL. FIN. CODE §3372.5; 12 C.F.R. §215.5(c)(3).

14. CAL. FIN. CODE §3372; 12 C.F.R. §215.7 (1985).

15. CAL. FIN. CODE §3372; 12 C.F.R. §215.5(c)(3) (1985); *see infra* note 13.

16. CAL. FIN. CODE §3372; 12 C.F.R. §215.8 (1985). The report must state the name of the lender, the date and amount of each extension of credit, any security given for the loan, and the purpose for which the proceeds of the loan were used. CAL. FIN. CODE §3372; 12 C.F.R. §215.8 (1985).

17. CAL. FIN. CODE §3372; 12 C.F.R. §215.7 (1985).

18. *Id.*

19. 1984 Cal. Stat. c. 975, §3, at 394 (adding CAL. FIN. CODE §3376).

20. CAL. FIN. CODE §3376. The bank is subject to a maximum fine of \$10,000 for each violation. *Id.*

21. CAL. FIN. CODE §3377(a). Extensions of credit made before the effective date of Chapter 956 and bearing a maturity date of October 1, 1986 or later may be repaid in accordance with the payment schedule in existence on the effective date of Chapter 956. If the bank is unable to meet the October 1, 1986 deadline, the superintendent of banks may extend the deadline for good cause. *Id.* §3377(b).